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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

MICHAEL SCHMIDT, an individual, and  
ADRIA SCHMIDT, an individual, JAMES  
MCFARLANE, an individual, on behalf of  
themselves and those similarly situated;

Plaintiffs,

vs.

RED ROCK FINANCIAL SERVICES, LLC, a  
Delaware limited liability company,

Defendant.

Case No.:

**CLASS ACTION COMPLAINT FOR  
VIOLATIONS OF THE FAIR DEBT  
COLLECTION PRACTICES ACT**

**JURY DEMANDED**

**COMPLAINT**

Plaintiffs, MICHAEL SCHMIDT, ADRIA SCHMIDT, and JAMES MCFARLANE  
(hereinafter referred to as "PLAINTIFFS") by and through their undersigned attorney, allege  
upon knowledge as to themselves and their own acts, and upon information and belief as to all  
other matters, brings this complaint against the above-named defendant and in support thereof  
alleges the following:

**PRELIMINARY STATEMENT**

1. PLAINTIFFS bring this action on their own behalf and on the behalf of all others  
similarly situated for actual and statutory damages arising from DEFENDANT'S violations of

1 the Fair Debt Collection Practices Act (hereinafter referred to as the “FDCPA”), 15 U.S.C. §  
2 1692, *et seq.*, and Nevada Revised Statutes.

### 3 JURISDICTION AND VENUE

4 2. Jurisdiction of this Court is invoked under 15 U.S.C. § 1692k(d) and 28 U.S.C. §  
5 1331, and supplemental jurisdiction exists for the state law claims under 28 U.S.C. § 1367.

6 3. Venue in this District is proper because PLAINTIFFS and DEFENDANT reside  
7 and/or do business in the District of Nevada. Venue is also proper in this district because the  
8 acts and transactions that give rise to this action occurred, in substantial part, in the District of  
9 Nevada.  
10

### 11 PARTIES

12 4. PLAINTIFFS are natural persons who reside in Nevada.

13 5. PLAINTIFFS are “consumers” as defined in the FDCPA at 15 U.S.C. § 1692a(3)

14 6. PLAINTIFFS allegedly owe a (past due) consumer debt as defined by 15 U.S.C.  
15 § 1692a(5) and NRS § 649.010.  
16

17 7. RED ROCK FINANCIAL SERVICES, LLC (hereinafter referred to as  
18 “DEFENDANT”) is a Delaware limited liability corporation, the principal purpose of whose  
19 business is the collection of debts.  
20

21 8. PLAINTIFFS are informed and believe, and thereon alleges, that DEFENDANT  
22 regularly collects or attempts to collect consumer debts owed or due or asserted to be owed or  
23 due another and that the DEFENDANT is a “debt collector” as defined by 15 U.S.C. §  
24 1692a(6).  
25

### 26 STATEMENT OF FACTS

27 9. PLAINTIFFS repeat, re-allege, and incorporates by reference, paragraphs 1  
28 through 8 inclusive, above.

1           10.     On or about February 29, 2012 and May 11, 2012, DEFENDANT mailed or  
2 caused to be mailed form collection letters to PLAINTIFFS, and each of them, in an attempt to  
3 collect a consumer debt from PLAINTIFFS allegedly owed to another. True and correct copies  
4 of the form letters are attached hereto as Exhibit "1".

5  
6           11.     The form letters sent by DEFENDANT to PLAINTIFFS state, in pertinent part:

7                   If you choose not to pay your account in full within 30 days from  
8 the date of this letter, in accordance with Nevada Revised Statutes,  
9 Red Rock Financial Services will prepare and record a Lien for  
10 Delinquent Assessments on behalf of [the original creditor].  
11 Additional fees estimated in the amount of \$340.00 plus mailing  
fees will be added to the above account to cover the cost of  
preparing and/or recording the Lien for Delinquent Assessments.  
Please note these are estimated costs.

12                   **A "30 day period" has been established for disputing the**  
13 **validity of the debt. Federal Law does not require Red Rock**  
14 **Financial Services to wait the "30 day period" to prepare**  
15 **and/or record the Lien for Delinquent Assessments. The "30**  
**day period", according to Federal Law, begins when this letter**  
**is received by you.**

16                   All disputes regarding the validity of the debt must be submitted in  
17 written form to Red Rock Financial Services. When the dispute is  
18 received, Red Rock Financial Services will provide verification of  
19 the debt and a copy of such verification will be mailed to you.  
20 Collection efforts on the part of Red Rock Financial Services will  
21 cease during the research process. When the research is completed,  
22 you will receive a written response. In addition, Red Rock  
Financial Services will provide you with the original creditor(s) and  
address(es) if different from the current. In the event that Red Rock  
financial services does not receive in written form, a dispute of the  
debt, Red Rock Financial Services will assume the debt is valid.

23           12.     In addition, these letters seek to collect unspecified "additional collection fees  
24 and costs."

25           13.     On June 26, 2012, DEFENDANT mailed or caused to be mailed a second form  
26 collection letter to Plaintiff Michael Schmidt in an attempt to collect a consumer debt from  
27  
28

1 PLAINTIFFS allegedly owed to another. A true and correct copy of the second form letter is  
2 attached hereto as Exhibit "2".

3 14. The second form letter states, in pertinent part:

4 **As of the date of this letter, the "30 Day Period" is still in**  
5 **effect. In the case that Red Rock Financial Services does not**  
6 **receive in written form a dispute of the debt, Red Rock**  
7 **Financial Services will assume the debt is valid. All disputes of**  
8 **the validity of the debt must be submitted in written form to**  
9 **Red Rock Financial Services. When the dispute is received,**  
10 **Red Rock Financial Services will provide verification of the**  
11 **debt and a copy of each such verification will be mailed to you.**  
12 **Upon receipt of a written dispute, collection efforts on the part**  
13 **of Red Rock Financial Services will cease. A written response**  
14 **will be provided detailing the result of our findings regarding**  
15 **said dispute.**

16 Allowed by Nevada Revised Statutes, Red Rock Financial Services  
17 may record a Notice of Default and Election to Sell no sooner then  
18 [sic] the 31<sup>st</sup> day from the mailing of the Lien for Delinquent  
19 Assessments. As a courtesy to you, an Intent to Notice of Default  
20 courtesy letter will be sent to you via first class mail at an  
21 additional charge.

22 15. This letter also seeks to collect unspecified "fines and collection fees and costs."

### 23 CLASS ALLEGATIONS

24 16. PLAINTIFFS repeat, re-allege, and incorporates by reference, paragraphs 1  
25 through 15 inclusive, above.

26 17. These claims for relief is brought by PLAINTIFFS individually and on behalf of  
27 the following classes :

- 28 a. Class Number One: A class consisting of consumers with Nevada addresses  
who:  
i. Within one year prior to the filing of this action;  
ii. Were sent a collection letter by DEFENDANT;

1                   iii. In a form materially identical or substantially similar to the Form

2                   Letters sent to the PLAINTIFFS, attached hereto as Exhibit "1"; and

3                   iv. The letter was not returned by the postal service as undelivered.

4  
5           b. Class Number Two: A class consisting of consumers with Nevada addresses  
6           who:

7                   v. Within one year prior to the filing of this action;

8                   vi. Were sent a collection letter by DEFENDANT;

9                   vii. In a form materially identical or substantially similar to the Form

10                  Letters sent to the PLAINTIFFS, attached hereto as Exhibit "2"; and

11                  viii. The letter was not returned by the postal service as undelivered.

12           18. Under Federal Rule of Civil Procedure Rule 23, a class action is appropriate and  
13           preferable in this case because:

14  
15           a. The collection letters at the heart of this litigation are form letters and the  
16           class is so numerous that joinder of all members is impractical.

17           b. There are questions of law and fact common to the class that predominate  
18           over any questions affecting individual class members. The principal  
19           question presented by this case is whether the form letters attached as  
20           Exhibits 1 and 2 violated various provisions of the FDCPA, including but not  
21           limited to 15 U.S.C. § 1692g.

22  
23           c. The only issue related to the individuals of class is the identification of the  
24           individual consumers who received the Form Letters (i.e. the class members),  
25           a matter capable of ministerial determination from the DEFENDANT'S  
26           records.

1 d. PLAINTIFFS' claims are typical of those of the class members. All are based  
2 on the same facts and legal theories.

3 e. PLAINTIFFS will fairly and adequately represent the class members'  
4 interests and have retained counsel experienced in handling class actions and  
5 collection abuse claims.  
6

7 19. A class action is superior for the fair and efficient adjudication of the class  
8 members' claims as Congress specifically envisioned class actions as a principal means of  
9 enforcing the FDCPA. *See* 15 U.S.C. § 1692k. The members of the class are generally  
10 unsophisticated consumers, whose rights will not be vindicated in the absence of a class action.  
11 Prosecution of separate actions by individual members of the classes would also create the risk  
12 of inconsistent or varying adjudications resulting in the establishment of inconsistent or varying  
13 standards and would not be in the best interest of judicial economy.  
14

15 20. If facts are discovered to be appropriate, PLAINTIFFS will seek to certify the  
16 class under Rule 23(b)(3) of the Federal Rules of Civil Procedure.

17 **FIRST CLAIM FOR RELIEF**

18 **BROUGHT BY PLAINTIFFS INDIVIDUALLY AND ON BEHALF OF**  
19 **AND A CLASS OF SIMILARLY SITUATED PERSONS DEFINED HEREIN AS CLASS**  
20 **ONE AND CLASS TWO**  
21 **FOR VIOLATIONS OF THE FDCPA 15 U.S.C. § 1692g(a)**

22 21. PLAINTIFFS repeat, re-allege, and incorporate by reference, paragraphs 1  
23 through 20 inclusive, above.

24 22. The FDCPA requires that, when first communicating with a consumer in  
25 connection with the collection of a debt or within five days afterwards, debt collectors shall  
26 send the consumer a written notice containing:

- 27 (1) the amount of the debt;  
28 (2) the name of the creditor to whom the debt is owed;  
(3) a statement that unless the consumer, within thirty days after

1 receipt of the notice, disputes the validity of the debt, or any  
2 portion thereof, the debt will be assumed to be valid by the debt  
collector;

3 (4) a statement that if the consumer notifies the debt collector in  
4 writing within the thirty-day period that the debt, or any portion  
thereof, is disputed, the debt collector will obtain verification of  
5 the debt or a copy of a judgment against the consumer and a copy  
of such verification or judgment will be mailed to the consumer  
6 by the debt collector; and

7 (5) a statement that, upon the consumer's written request within  
the thirty-day period, the debt collector will provide the consumer  
8 with the name and address of the original creditor, if different  
from the current creditor.

9 15 U.S.C. § 1692g(a).

10 23. The form letters sent by DEFENDANT to PLAINTIFFS and the class members  
11 are deceptive and misleading because they require that all disputes be submitted in writing in  
12 violation of 15 U.S.C. section 1692g(a). *See Camacho v. Bridgeport Fin. Inc.*, 430 F.3d 1078,  
13 1081-82 (9th Cir. 2005).

14 24. As a result of the FDCPA violations by DEFENDANT, PLAINTIFFS are  
15 entitled to statutory damages plus actual damages to be shown specifically at the time of trial.

16 25. It has been necessary for PLAINTIFFS to obtain the services of an attorney to  
17 pursue this claim and PLAINTIFFS are entitled to recover reasonable attorneys' fees therefor.  
18

19 **SECOND CLAIM FOR RELIEF**

20 **BROUGHT BY PLAINTIFFS INDIVIDUALLY AND ON BEHALF OF**  
21 **AND A CLASS OF SIMILARLY SITUATED PERSONS DEFINED HEREIN AS CLASS**  
22 **ONE AND CLASS TWO**  
23 **FOR VIOLATIONS OF THE FDCPA 15 U.S.C. § 1692g(b)**

24 26. PLAINTIFFS repeat, re-allege, and incorporate by reference, paragraphs 1  
25 through 25 inclusive, above.

26 27. 15 U.S.C. § 1692g(b) provides, in pertinent part: "Any collection activities and  
27 communication during the 30-day period may not overshadow or be inconsistent with the  
28

1 disclosure of the consumer's right to dispute the debt or request the name and address of the  
2 original creditor."

3 28. The form letters are deceptive and misleading, and violate 15 U.S.C. § 1692g(b)  
4 in that PLAINTIFFS' and the class members' rights to dispute the debt are overshadowed in the  
5 letter by DEFENDANT'S contradictory threat to record a lien on PLAINTIFFS' and the class  
6 members' property and impose additional costs and fees if the debt is not paid in full within 30  
7 days of the date of the letter. *See Swanson v. S. Or. Credit Serv., Inc.*, 869 F.2d 1222, 1225 (9<sup>th</sup>  
8 Cir. 1989).

10 29. As a result of the FDCPA violations by DEFENDANT, PLAINTIFFS are  
11 entitled to statutory damages plus actual damages to be shown specifically at the time of trial.

12 30. It has been necessary for PLAINTIFFS to obtain the services of an attorney to  
13 pursue this claim and PLAINTIFFS are entitled to recover reasonable attorneys' fees therefor.

14  
15 **THIRD CLAIM FOR RELIEF**

16 **BROUGHT BY PLAINTIFFS INDIVIDUALLY AND ON BEHALF OF**  
17 **AND A CLASS OF SIMILARLY SITUATED PERSONS DEFINED HEREIN AS**  
18 **CLASS ONE AND CLASS TWO**  
19 **FOR VIOLATIONS OF THE FDCPA 15 U.S.C. § 1692f**

20 31. PLAINTIFFS repeat, re-allege, and incorporate by reference, paragraphs 1  
21 through 30 inclusive, above.

22 32. Section 1692f of the FDCPA states in pertinent part:

23 A debt collector may not use unfair or unconscionable means to  
24 collect or attempt to collect any debt. Without limiting the general  
25 application of the foregoing, the following conduct is a violation of  
26 this section:

27 (1) The collection of any amount (including any interest, fee,  
28 charge, or expense incidental to the principal obligation) unless  
such amount is expressly authorized by the agreement creating the  
debt or permitted by law.







- (2) For statutory damages awarded to PLAINTIFFS, not to exceed \$1000, pursuant to 15 U.S.C. § 1692k(a)(2)(A);
- (3) For statutory damages awarded to the Class Members, pursuant to 15 U.S.C. § 1692k(a)(2)(B), of the amount not to exceed the lesser of \$500,000.000 or 1 per centum (1%) of the net worth of the DEFENDANT;
- (4) A declaration that the form letters, represented by Exhibits “1” and “2”, violated the FDCPA, pursuant to 15 U.S.C. § 1592k(a)(3);
- (5) For disgorgement of all of Defendant’s profits obtained through use of the form letters at issue;
- (6) For reasonable attorney fees for all services performed by counsel in connection with the prosecution of these claims;
- (7) For reimbursement for all costs and expenses incurred in connection with the prosecution of these claims; and
- (8) For any and all other relief this Court may deem appropriate.

DATED this 9<sup>th</sup> day of October 2012.

**THE BOURASSA LAW GROUP, LLC**

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